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### REMARKS

Claims 1-39 are pending in this application.

The Office Action rejects, under 35 U.S.C. § 102, claims 1-3, 20, 30, and 31 over Crockett et al. (U.S. Patent No. 6,781,963). The Office Action also rejects, under 35 U.S.C. § 103, claims 4-8, 11-18, 21-29, and 32-39 over Crockett et al. and Maggenti (U.S. Patent No. 6,477,150) and claims 9-10 and 19 over Crockett et al. and Dailey (U.S. Patent No. 6,449,491). These rejections are respectfully traversed.

Applicants assert that Crockett et al. does not disclose or suggest selecting a push-to-talk session unavailability mitigation based on the push-to-talk metric, as recited in independent claim 1.

"A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference" (MPEP §2131, citing *Verdegaal Bros. v. Union Oil Co. of California*, 2 USPQ2d 1051, 1053 (Fed. Cir. 1987)).

Crockett et al. discloses a method in a communication device for terminating a member from a group call in a group communication network (col. 2, lines 24-29). There is no disclosure of selecting a push-to-talk session unavailability mitigation based on the push-to-talk metric. In fact, Crockett et al. discloses the exact opposite of selecting a push-to-talk session unavailability mitigation based on the push-to-talk metric. In particular, Crockett et al. discloses initiating call termination based on media flow inactivity. This is describing simply ending a call based on a period of inactivity. Terminating a call is the exact opposite of session unavailability mitigation. More particularly, terminating a call hardly mitigates an unavailability of a session because terminating a call exasperates the unavailability of a session by causing the session to no longer be available. Because Crockett et al. discloses terminating a call, Crockett et al. discloses the opposite of and teaches away from mitigating the unavailability of a session.

Thus, Crockett et al. does not disclose or suggest selecting a push-to-talk session unavailability mitigation based on the push-to-talk metric, as recited in independent claim 1 and similarly recited in independent claim 30.

Furthermore, Crockett et al. does not disclose both monitoring push-to-talk usage and determining a push-to-talk metric based on push-to-talk usage, as also recited independent claim

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1 and similarly recited in independent claim 30. The section of Crockett et al. cited by the Office Action only discloses initiating call termination based on media flow inactivity. If the Office Action is alleging media flow inactivity is push-to-talk usage, there is no section of Crockett et al. that discloses determining a push-to-talk metric based on the push-to-talk usage. If the Office Action is alleging media flow inactivity is a push-to-talk metric, there is no section of Crockett et al. that discloses monitoring push-to-talk usage. Claim 1 clearly recites two separate elements and two separate steps relating to the two elements of usage and a metric. Crockett et al. does not disclose these two elements or steps with "media flow inactivity." Furthermore, if the Office Action is alleging "producing usage information" in col. 8, line 64 satisfies the claimed elements, Applicants assert there is no disclosure of selecting a push-to-talk session unavailability mitigation based on that information.

Therefore, Crockett et al. does not disclose both monitoring push-to-talk usage and determining a push-to-talk metric based on push-to-talk usage, as recited independent claim 1 and similarly recited in independent claim 30.

Crocket et al. also does not disclose or suggest comparing a push-to-talk usage metric to a threshold based on the usage of the mobile communications device by a user, as recited in independent claim 20. According to Crockett et al. the RD 'may make a decision' at col. 13 line 63. However, the alleged metrics, "loading and availability of the MCUs" are based on network behavior, not user behavior. Accordingly, Crockett et al. does not disclose or suggest comparing a push-to-talk usage metric to a threshold based on the usage of the mobile communications device by a user.

Crockett et al. further does not disclose modifying a push-to-talk metric based on a parameter of operation of a push-to-talk session, as also recited in independent claim 20. While Crockett et al. does disclose monitoring call activity at col. 8 line 63, Crockett et al. does not disclose modifying a push to talk metric based on this. The Office Action cites, as an example of modifying, the storing user of data records (UDRs) on the usage data server (UDS) in col. 9 lines 8 -19. Two types of usage log records (ULRs) are mentioned in Crockett et al.: 'cumulative participation time' in col 8 line 36, and 'total number of seconds the participant held the flow' in col. 8 line 37-38. However, Crockett et al. does not describe selecting, establishing, or

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modifying based on these alleged metrics as the basis for session unavailability mitigation.

Thus, Crockett et al. does not disclose the features recited in independent claim 20.

Applicants further assert the Office Action has not provided a *prima facie* case of obviousness with respect to claim 26. In particular, the Office Action states, "Regarding claim 26, discloses [sic] a method of push-to-talk..." The Office Action does not state which reference discloses the method. Consequently, the Office Action has not provided a *prima facie* case of obviousness with respect to claim 26.

Furthermore, Crockett et al. and Maggenti do not disclose or suggest monitoring at least one metric of push-to-talk operation of the mobile communication device, the metric of push-to-talk operation being based on the usage of the mobile communication device by a user of the mobile communication device, modifying a push-to-talk mitigation parameter based on the at least one metric of push-to-talk operation of the mobile communication device, and reconfiguring at least one push-to-talk session unavailability mitigation based on the modified push-to-talk mitigation parameter, as recited in independent claim 26.

Maggenti discloses a system and method for providing group communication services in an existing communication system. The system and method is implemented within an existing CDMA wireless communication system (col. 2, lines 11-16). A communication device (CD) 202 expects to receive at least one PTX response message for every transmitted PTT request. If a PTX response is not received within a predetermined time, the CD 202 assumes the PTT was lost in transit and retransmits a second PTT (col. 30, lines 43-45). The predetermined time can be for a fixed time duration or it can be altered dynamically, depending on system conditions. For example, the predetermined time could have a relatively short duration (one to two seconds) if the net is not dormant (col. 30, lines 48-52).

Maggenti only discusses increasing a timeout or retransmission delay based on when the network is dormant. This is not based on usage by a user of a mobile communication device. This is based on network behavior. In particular, upon reading col. 30, it is easy to recognize Maggenti is simply identifying one of two states of the PTT network: active or dormant. Thus, increasing a timeout or retransmission delay is based on network behavior, not based on usage by a user of a mobile communication device.

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Furthermore, the Office Action admits Maggenti does not describe a method where the metric of push-to-talk operation is based on the usage of a communication device by a user of the communication device.

Crockett et al. fails to make up for the deficiencies of Maggenti. In particular, there is no motivation to combine the teachings of Crockett et al. with Maggenti. In fact, Crockett et al. teaches away from a push-to-talk session unavailability mitigation based on a modified push-to-talk mitigation parameter, which is based on a metric of push-to-talk operation. Crockett et al. teaches away from the features because Crockett et al. discloses the exact opposite of selecting a push-to-talk session unavailability mitigation based on the push-to-talk metric. In particular, Crockett et al. discloses initiating call termination based on media flow inactivity. This is describing simply ending a call based on a period of inactivity. Terminating a call is the exact opposite of session unavailability mitigation. More particularly, terminating a call hardly mitigates an unavailability of a session because terminating a call exasperates the unavailability of a session by causing the session to no longer be available. Because Crockett et al. discloses terminating a call, Crockett et al. discloses the opposite of and teaches away from mitigating the unavailability of a session.

Thus, Crockett et al. and Maggenti do not disclose or suggest monitoring at least one metric of push-to-talk operation of the mobile communication device, the metric of push-to-talk operation being based on the usage of the mobile communication device by a user of the mobile communication device, modifying a push-to-talk mitigation parameter based on the at least one metric of push-to-talk operation of the mobile communication device, and reconfiguring at least one push-to-talk session unavailability mitigation based on the modified push-to-talk mitigation parameter, as recited in independent claim 26.

Therefore, Applicants respectfully submit that independent claims 1, 20, 26, and 30 define patentable subject matter. The remaining claims depend from the independent claims and therefore also define patentable subject matter. Accordingly, Applicants respectfully request the withdrawal of the rejections under 35 U.S.C. § 102 and 35 U.S.C. § 103.

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CONCLUSION

Based on the foregoing amendments and remarks, Applicants respectfully submit this application is in condition for allowance. Favorable consideration and prompt allowance of claims 1-39 are earnestly solicited.

Should the Examiner believe that anything further would be desirable in order to place this application in better condition for allowance, the Examiner is invited to contact Applicants' undersigned representative at the telephone number listed below.

The Commissioner is hereby authorized to deduct any fees arising as a result of this Amendment or any other communication from or to credit any overpayments to Deposit Account No. 50-2117.

Respectfully submitted,



Matthew C. Loppnow  
Attorney for Applicant  
Registration No. 45,314

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Phone No. (847) 523-2585  
Fax No. (847) 523-2350

Please send correspondence to:  
Motorola, Inc.  
Intellectual Property  
600 North U.S. Highway 45  
Libertyville, IL 60048